

1. Heard learned Advocates for the applicants and learned APP for the State.

2. Cri.Application No.2597 of 2005 has been preferred by original accused No.4 and Cri.Application No.309 of 2006 has been preferred by original accused No.3. Both the applicants have been mainly convicted under Section 302 of IPC.

3. It is the prosecution case that the applicants murdered the deceased i.e. Ahmedulla Inayatulla. Thereafter, the body of Ahmedulla was cut into two parts. Then, the two parts were placed into two separate trunks. Thereafter, the said trunks were loaded in a Taxi and taken to the railway station. The trunks were then loaded in the train.

4. The learned Advocates for the applicants have submitted that this is a case of circumstantial evidence and the circumstances are not such as to connect the applicants with the crime.

5. On the other hand, the learned APP for the State has pointed out that the prosecution has examined P.W.46 Sajid Fayyas Hussain Qureshi who was the driver of the taxi. The taxi driver has clearly stated that the said two trunks were loaded in his taxi by these two accused and accused Nos.3 & 4 i.e. the present applicants also sat in his taxi and thereafter the taxi was taken to C.S.T. railway station. This witness has

identified the trunks as well as these two accused.

6. Thus, it is clear that the present accused travelled in a taxi alongwith two trunks in which the two pieces of the body of deceased were found. Moreover, as far as accused No.4 is concerned there is recovery of nylon rope and as far as accused No.3 is concerned there is recovery of two choppers at his instance.

7. The learned Advocate for the applicants submitted that it was impossible for the taxi driver to have identified these two accused after such a long time and identification, by this witness of these two accused after such a long time, cannot be relied upon. In this connection we would like to advert to the case of **Ravinder Kumar and Another Vs. State of Punjab** reported in **2001 Supreme Court Cases (Cri) 1384**, wherein the facts were almost similar. In the said case also according to the prosecution case the two appellant-accused after murdering the deceased, packed the dead body in a wooden container, wrapped it in a gunny bag and on the top of which scribbled a fictitious name and address. They then engaged a rickshaw-puller to transport the container to the parcel service centre adjoining the railway station. The rickshaw-puller collected the load from the

premises of the appellants and transported it in his rickshaw to the parcel service centre. The box was unloaded from the vehicle to the parcel building by the rickshaw-puller with the help of the two appellants and another person. Several days thereafter, the said rickshaw-puller identified the appellants as the persons who had engaged him to carry the load as also the wooden box in which the load was packed. It was contended that it was not possible for any person, much less a rickshaw-puller (Pw 5), to remember who exactly employed him to carry a particular load on a particular day, after the lapse of several days thereafter.

. The Apex Court held that,

" The second contention relates to the evidence of PW 5 Daya Ram (Rikshaw-puller). He remembered the two appellants who engaged him to carry the load in his rickshaw up to the railway station. He also identified the wooden box in which the load was packed, with the help of the scribblings made on it. The contention is that it is not possible for any person, much less a rikshaw-puller like PW 5, to remember who exactly employed him to carry a particular load on a particular day, after the lapse of several days thereafter. This contention is raised overlooking the psychological phenomenon that human memory is very often a conditioned characteristic. Anything which has any special or peculiar lineament can create an impact on the human mind lasting for long. While it is true that routine events in a man's day-to-day life may not remain in his mind for being remembered later, any odd or bizarre happenings involving him or in front of him have the tendency to stick in his mind indelibly. If there is any cause for him to recollect such events again they get refreshed again. That is why he is able to narrate such events with all details when asked to do so. This applies to all witnesses in criminal cases involving

serious offences. Normally no porter or rickshaw-puller could speak from memory as to whom or whose load he carried many days ago. But if the carrying of a load on a particular day was soon followed by the flash of sensational news in the locality -- that the load contained the corpse of a murdered person, the instinctive reaction of the carrier is to become inquisitive to know whether it was in respect of the load which he himself carried. If that inquisitiveness had turned positive it is extremely probable that all the vivid details relating to that event would stick in his memory. For him such event would not have been a usual occurrence but extraordinarily odd and queer. Hence it is not likely to fade out of the canvas of his mind. It will be unrealistic to jettison the testimony of such a witness on the mere ground that he could not have remembered after the lapse of a long period the identity of the persons who engaged him and also of the load which he carried. We, therefore, repel such contention."

8. Looking to these facts, we are of the opinion that this is not a fit case to grant bail.

9. Both the applications are rejected.

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI, J.)